

No. 16-0302

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

In re: VISIONWORKS OF AMERICA, INC.,                     )  
   )  
Petitioner.   )  
   )

**FILED**  
Feb 25, 2016  
DEBORAH S. HUNT, Clerk

ORDER

Before: GUY, MOORE, and McKEAGUE, Circuit Judges.

1:15cv2306

Defendant Visionworks of America, Inc. (“Visionworks”) petitions to appeal the order remanding this case to state court pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1453(c). The plaintiff opposes the petition to appeal, and Visionworks replies.

The granting of a CAFA petition to appeal is within our discretion. There are no standards set forth in the CAFA for evaluating a petition to appeal, but “[d]iscretion to review a remand order is not rudderless.” *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 555 (2014). We consider factors such as whether the question presented in the appeal is “important, unsettled, and recurrent” and whether it will “escape meaningful appellate review” absent the appeal. *College of Dental Surgeons of P.R. v. Conn. Gen. Life Ins. Co.*, 585 F.3d 33, 39 (1st Cir. 2009). Visionworks asserts that its appeal will raise the issue of whether—in an action involving a proposed class and claimed damages that continue to grow throughout the litigation—a defendant is required to speculate that the damages will eventually exceed CAFA’s amount-in-controversy requirement or may a defendant wait until it has ascertained that the threshold amount is satisfied to remove an action. We conclude that an appeal is warranted.

No. 16-0302

-2-

A decision on a CAFA appeal should be rendered within sixty days, unless an extension of time is agreed to by all parties or a ten-day extension is granted for good cause. § 1453(c)(2), (3). This sixty-day period begins to run when a petition to appeal is granted. *In re Mort. Elec. Registration Sys., Inc.*, 680 F.3d 849, 853 (6th Cir. 2012).

The petition to appeal is **GRANTED**. In view of the strict time limitations for resolution of the appeal, the briefing and submission will be accelerated. The clerk is directed to enter an abbreviated briefing schedule and to expedite the submission to the court.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk